

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**

8 PHASE II CHIN, LLC, et al.,

2:08-CV-162 JCM (GWF)

9 Plaintiffs,

10
11 v.

12 FORUM SHOPS, LLC, et al.,

13 Defendants.
14

15 **ORDER**

16 Presently before the court is plaintiff Love & Money, LLC's motion for sanctions against
17 Caesars defendants for spoliation of evidence. (Doc. #362). Caesars defendants have responded (doc.
18 #371), and the plaintiff has replied (doc. #372).

19 Plaintiff Love & Money contends that Caesars has failed to maintain ".pst files" for Caesars
20 employees John Unwin, David Bennett and Gary Selesner. Plaintiff alleges that the maintenance of
21 these files would have preserved Caesars defendants' ability to conduct meaningful searches of its
22 archived emails, whereas Caesars defendants now claim that it would be prohibitively expensive to
23 do so.

24 Spoliation of evidence occurs when a party destroys evidence after receiving some notice that
25 the evidence is potentially relevant to litigation. *U.S. v. Kitsap Physicians Serv.*, 314 F.3d 995, 1001
26 (9th Cir. 2002). A party enjoys a safe harbor from sanctions under the Federal Rules only where the
27 electronic evidence is lost as the result of routine operations of the party's electronic information
28

1 system. FED. R. CIV. P. 37(e). Where spoliation occurs, the court has discretion to impose sanctions
2 against a litigant. *Uniguard Sec. Ins. Co. v. Lakewood Eng'g & Mfg. Corp.*, 982 F.2d 363, 368 (9th
3 Cir. 1992).

4 The court finds that sanctions are not warranted in this case. The Caesars defendants
5 represent that they have conducted a "systematic and exhaustive search for emails related to OPM."
6 (Doc. #371, p.3). Caesars defendants have answered all of the plaintiffs' supplemental
7 interrogatories, and have represented that "from 2004, prior to execution of the joint defense
8 agreement between the Forum Defendants and the Caesars Defendants, to July 2009 when OPM
9 closed, the Caesars Defendants' email has been meticulously maintained in tape back-up archives."
10 (Doc. #371, p.4). The court is also satisfied that Caesars defendants have demonstrated that
11 additional information would be burdensome, time consuming, and very expensive to produce.
12 Finally, in light of the massive amount of discovery already conducted and the parties' agreement
13 to proceed to trial, the court finds no reason to impose sanctions at this time.

14 Accordingly,

15 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion for
16 sanctions against Caesars defendants for spoliation of evidence (doc. #362) is DENIED.

17 DATED this 24th day of March, 2011.

18
19
20 
21 UNITED STATES DISTRICT JUDGE
22
23
24
25
26
27
28